IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10926 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JESINGBHAI SAVABHAI

Versus

KHETURAM BISHAMBHARDAS

Appearance:

1. Special Civil Application No. 10926 of 1998

MR MUKESH H RATHOD for Petitioner No. 1-5

DS AFF.NOT FILED (R) for Respondent No. 1

MR MUKESH PATEL A.G.P. for Respondent No. 2

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 01/07/2002

ORAL JUDGEMENT

The petitioners have approached this Court for seeking direction on respondent No.2 to effect the recovery of the amounts due to them by respondent No.1 by resorting to remedies provided under the Bombay Land Revenue Code on the basis of Recovery Certificate dated

15th September, 1997.

The petitioners who are the employees of respondent No.1 were in the employment for about seven years and thereafter on the allegations of having committed acts of misconduct, their services were terminated by respondent No.1 with effect from 30th July, 1988. The petitioners being dissatisfied with the said decision of the respondent No.1, approached the Labour Court by way of reference No.2388/1988. The Labour Court, Ahmedabad vide decision dated 2nd January, 1995 granted the reference and directed the respondent No.1 to reinstate all the petitioners with continuity of service and payment of 50% backwages. The said award is being challenged by respondent No.1 before this Court by filing Special Civil Application No.7602/1995. The said petition came to be admitted by this Court on 18th December, 1995 and interim relief came to be granted ex-parte. Subsequently, the present petitioners who are respondents in Special Civil Application No.7062/1995 preferred Civil Application No.3081/1996 praying for vacating interim relief, whereby the implementation of the impugned award was stayed. This Court partly granted the said Civil Application by order dated 26th March, 1996 and modified the earlier order regarding interim relief and with this modification the implementation of the impugned award came to be stayed subject to provisions of Section 17-B of the Industrial Disputes Act, 1947.

Though the aforesaid modification has been made by this Court, there was no compliance of Section 17-B by the respondent No.1, the petitioners have again approached this Court by filing Civil Application No.6990/1996 praying for vacating the interim relief passed by this Court on Civil Application No.3081/1996. This Court however, disposed of the Civil Application No.6990/1996 without passing any order on 3rd April, 1997, since the alternative remedy was available to the petitioners by filing appropriate application to the authority under the Payment of Wages Act with a prayer to recover the arrears of wages by way of revenue dues under the provisions of Bombay Land Revenue Act. The petitioners therefore, filed such an application to the authority under the Payment of Wages Act, which came to be granted vide order dated 15th September, 1999. Vide the said order, respondent No.1 was directed to pay a sum of Rs.1,94,271.75 paise to the petitioners within a period of 30 days from the date of the receipt of the order. He was further directed to pay to each petitioner a sum of Rs.200/- towards the expenses of the case. The

respondent No.1 was further directed to deposit Rs.4,300/- in the Labour Court towards the Court Fee Stamp. It seems that necessary certificate is issued by the authority under the Payment of Wages Act to the Collectorate to recover the aforesaid amount by way of arrears and other revenue from respondent No.1. The said certificate is dated 31st March, 1998. The respondent No.2 was also served with the notice by the advocate for the petitioners dated 8th April, 1998 requesting him to effect the recovery of the amount on the basis of Recovery Certificate as early as possible and the said notice was duly received by respondent No.2. Since respondent No.2 has not effected the recovery for a considerable time, the petitioners are constrained to file this petition under Article 226 of the Constitution of India.

It appears from the record of this petition that on 14th March, 2001 this Court (Coram : K.M. Mehta, J.) passed an order directing respondent No.2 to file affidavit to show what steps he had taken, on or before 27th March, 2001, to effect the recovery of the amount. It further appears that in response to the aforesaid direction, one Ramesh Chandra Incharge Mamlatdar, Aliean Recovery, Collectorate, Ahmedabad, filed affidavit-in-reply indicating the steps taken by the Collectorate to effect the recovery. In the last paragraph of the said affidavit-in-reply, it has been submitted that the authority under the Payment of Wages Act, Labour Court and the Registrar, Labour Court were informed vide letter dated 6th August, 1999 for issuance of new Recovery Certificate with new address of respondent No.1 either of the business place, or office or residence. However, nothing was heard from the Labour Court or the petitioners. Lastly, it has been stated that the said office is waiting for the new address of the respondent No.1 so as to make necessary correspondence in this regard.

sp. On 13th June, 2001 in view of the affidavit-in-reply filed on behalf of the respondent No.1, this Court while expressing its total dissatisfaction, has found that the affidavit was not in proper compliance of the earlier order dated 14th March, 2001. This Court, therefore, directed that the deponent of affidavit-in-reply and also the officer incharge of the Aliean Recovery to remain personally present before this Court alongwith the relevant records pertaining to the Recovery Certificate relating to the petitioners. This Court also directed the office to issue fresh notice to the respondent No.1 making it returnable on 25th June,

2002.

Today when the matter is heard, the learned advocate for the petitioners draws my attention to a communication addressed to respondent N.1 dated 2nd August, 2001 written by Mr.Mukesh H. Rathod on behalf of the petitioners, furnishing new address of respondent No.1. He also informs me that the said communication has been duly received by the office of respondent No.2. From what has been stated above, it clearly appears that for one reason or the other the recovery has been lingering on for all these years. Respondent No.2 does not seem to have taken adequate steps to effect the recovery and that has caused grave hardship to the petitioners. Such inaction or indifference on the part of the respondent No.2 cannot be tolerated. The petitioners who are out of employment since 30th July, 1988 have some how or other manage to survive. However, looking to the facts of this case it becomes evident that the life of the family members of the petitioners would be very miserable. For compliance of Section 17-B of the I.D. Act, also it is very necessary for regular compliance and necessary to locate respondent No.1 at the earliest and to make him start complying with the provisions of the said Section. In the circumstances, it is directed that the petitioners shall supply to respondent No.2 again a fresh address of respondent No.1 in-person on or before 10th July, 2002 and upon receipt of the fresh address from the petitioners as directed above, respondent No.2 will take all necessary steps in right earnest to recover the amount contained in Recovery Certificate by way of Land Revenue arrears under the provisions of Bombay Land Revenue Act as expeditiously as possible and in all circumstances not later than 30th September, 2002 and deposit the same before the authority under the Payment of Wages Act, Ahmedabad, failing which the concerned officer would personally be accountable for not effecting the recovery within that period, unless for plausible and convincing reasons existing making recovery not possible within the stipulated time. With this direction, this petition is allowed. Rule is made absolute with no order as to costs.

1.7.2002. [AKSHAY H. MEHTA, J.]

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